IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

IN RE: WILFRED A. OSORIO,

CHAPTER 13

DEBTOR(S) **CASE NO. 14-13427-RGM**

WILFRED A. OSORIO,

DEBTOR(S)/PLAINTIFF(S), **ADV. NO. 15-**

V.

CHARLES MALL COMPANY, LP,

CITI PLACE LIMITED PARTNERSHIP,

FAIRCREST HOMEOWNERS' ASSOCIATION,

FC BALLSTON COMMON, LLC,

INTERNAL REVENUE SERVICE,

LB FRANKLIN FARM LLC,

NATIONWIDE CREDIT, INC.,

STREET RETAIL, INC., AND

VIGILANT SOLUTIONS,

DEFENDANT(S)

COMPLAINT TO VALUE COLLATERAL AND TO AVOID SECURITY INTEREST

NOW COMES the above-named Debtor/Plaintiff, an individual, pursuant to 11 U.S.C. Sections 506(a) and 1322(b) (2) and Federal Rule of Bankruptcy Procedure 7001(2), who files this complaint to determine the value of Debtor's real property located at 5466 Joseph Johnston Lane, Centreville, Virginia 20120 (the "Property") and to avoid certain liens held by the above-named Defendants against the Property.

In support of his complaint Plaintiff alleges as follows;

JURISDICTION

1. On September 16, 2014, Plaintiff filed for relief pursuant to Chapter 13 of the United States Bankruptcy Code and the case was assigned number 14-13427-RGM (the "Case").

2. This is an adversary proceeding brought in the Case by the Plaintiff pursuant to 11 U.S.C. Section 506 and 11 U.S.C. Section 1322. This matter is a core proceeding as defined in 28 U.S.C. Section 157(b) (2) (I).

3. The Bankruptcy Court has jurisdiction over the subject matter raised in this complaint pursuant to 28 U.S.C. Section 1334. Venue is proper under 28 U.S.C. Sections 1408 and 1409.

PARTIES

4. Plaintiff is now, and at all times relevant to the Case has been, an individual residing at 6404 Lake Meadow Drive, Burke, VA 22015.

5. Defendant Charles Mall Company LP is a business located at 225 West Washington Street, Indianapolis, IN 46204.

6. Citi Place Limited Partnership is a business located at 19191 West Street Suite 100, Annapolis, IN 21401

7. Faircrest Homeowners' Association is a homeowners' association represented by Chadwick Washington, 3201 Jermantown Road, Suite 600, Fairfax, Virginia 22030.

8. Fc Ballston Common, LLC, is a business located at 700 Terminal Tower, 50 Public Square, Cleveland, Ohio 44113.

9. The Internal Revenue Service is a government agency with an address of PO Box 7346, Philadelphia, PA 19101.

10. LB Franklin Farm, LLC is a business located at 8405 Greensboro Drive, Suite 830, McLean, VA 22102.

11. Nationwide Credit Inc., is a business with an address of PO Box 26314, Lehigh Valley, PA 18002.

12. Street Retail, Inc., is a business located at 1626 East Jefferson Street, Rockville, MD 20852.

13. Vigilant Solutions is a business located at 6849 Old Dominion Drive, Suite 220, Mclean, VA 22101.

FACTS

14. Plaintiff is one of the record owners of the Property.

15. Ocwen Loan Servicing, LLP (Ocwen) holds the first mortgage against said Property. According to the proof of claim filed by Debtor's counsel on behalf of Ocwen, Debtor owed Ocwen $642,508.97 as of the date of the filing of the Case.

16. The second mortgage/trust, held by Nationwide Credit, Inc., had a balance of $74,417.09 as of the date of the filing of the Case, upon information and belief.

17. According to an appraisal obtained by the Plaintiff (Attached hereto and marked as Exhibit "A"), the value of the Property was $590,000.00 as of the date of the filing of the Case.

18. The value of the Property as of the date of filing is less than the total amounts owed Ocwen. All of the above-named Defendants have liens subordinate to Ocwen's, therefore, all have wholly undersecured claims.

19. All Defendants were served a copy of Plaintiff's Chapter 13 plan, along with a Special Notice to Secured Creditor, and did not object to confirmation.

COUNT I

11 U.S.C SECTION 506(A)

20. Plaintiff repeats and incorporates by reference the allegations set forth in paragraphs 1 through 19, above.

21. Section 506(a) provides that an "allowed claim of a creditor secured by a lien on property in which the estate has an interest…is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property…and is an unsecured claim to the extent that the value of such creditor's interest…is less than the amount of such allowed claim".

22. The value of the Property at the time of filing was $590,000.00, which is less than the balance of Ocwen. This makes all of the liens held by Defendants wholly undersecured and thus unsecured pursuant to 11 U.S.C. Section 506(a).

COUNT II

11 U.S.C. SECTION 1322(B) (2)

23. Plaintiffs hereby repeat and incorporate by reference the allegations contained in Paragraphs 1 through 22, above.

16. While 11 U.S.C. Section 1322(b) (2) expressly forbids the modification of a lien which is a mortgage on the Debtors' principal residence, the antimodification provision in 1322(b) (2) does not protect claims that are wholly unsecured under Section 506(a). Tanner v. FirstPlus Financial., Inc. (In RE Tanner), 217 F. 3d 1357 (11th Cir. 2000).

WHEREFORE, Debtor/Plaintiff prays for judgment as follows;

1. That this Honorable Court value the Property at $590,000.00;

2. That the liens held by Defendants against the Property are hereby void and shall be of no effect during the pendency of the Plaintiff's case under Chapter 13 of the Bankruptcy Code;

3. That all of the Defendants' claims shall be allowed in full as a general unsecured claim and shall be treated as such under the Plaintiffs' Chapter 13 plan; and

4. That all of the Defendants' liens shall be void for all other purposes as to the interest of a Plaintiff in the Property when and if that Plaintiff obtains a Chapter 13 discharge in the above-entitled bankruptcy case (and void for all other purposes as to the Property in toto if Plaintiff receives a Chapter 7 discharge), and that at such time as a discharge order is entered as to Plaintiff in the Plaintiff's Chapter 13 case, the Plaintiff shall be allowed to file said discharge along with a copy of this Order with the Fairfax County, Virginia Recorder of Deeds.

Dated: May 22, 2015

Respectfully Submitted,

Wilfred A. Osorio,

By Counsel,

/s/ William F. Markley, Esq.

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